IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 13TH NOVEMBER 2007 / 22ND KARTHIKA 1929

Crl.MC.No. 1931 of 2004()

CC.57/2004 of JUDL.MAGISTRATE OF FIRST CLASS COURT-II, KANNUR

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PETITIONER: ACCUSED.

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1. M.K.GEETHA, W/O.KRISHNAN,A GED 30 YEARS,
   RAM NIVAS, NEAR VETERNARY HOSPITAL,
   KAPPAD P.O. KANNUR.

2. M.K.SURENDRAN, S/O.KUNHAMBU, AGED 37
   YEARS, MEETHALEKUNNATH HOUSE, CHALA 12TH KANDY,
   P.O.THOTTADA, KANNUR.

BY ADV. SRI.C.KHALID
SRI.R.O.MUHAMED SHEMEEM
SRI.T.P.SAJID

RESPONDENTS: COMPLAINANT AND STATE.

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1. C.PRASSANNA, W/O.DAYANANDAN,
   AGED 43 YEARS, KEEPPALLI HOUSE, P.O.AZHIKODE,
   KANNUR.

2. THE STATE OF KERALA,R EPRESENTED BY PUBLIC
   PROSECUTOR, HIGH COURT OF KERALA,
   ERNAKULAM.

BY ADV. SRI.K.C.SANTHOSHKUMAR
SRI.GRASHIOUS KURIAKOSE
SMT.K.K.CHANDRALEKHA
PUBLIC PROSECUTOR SRI.NOBLE MATHEW

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 13.11.2007, THE COURT ON 13/11/2007 PASSED THE FOLLOWING:

K. HEMA, J.

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CRL.M.C. No. 1931 OF 2004

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Dated this the 13th November, 2007

O R D E R

This Crl. Miscellaneous case is filed to quash the complaint filed by the complainant/1st respondent herein against the petitioners before the Court of the Judicial Magistrate of the First Class-II, Kannur . As per the allegations in the complaint, the petitioners are brother and sister. Both of them approached the complainant and requested her to stand as a witness for the purchase agreement and made the complainant to believe that the first accused would pay the installment amount of the loan without any default and the second accused clearly told the complainant that in case there is any default in payment of the loan, it would be cleared and the entire liability will be that of his and that the complainant will not have any liability, but she is only made to sign as a witness. Believing the representation, she signed the document.

2. According to the complainant, she was made to put her signature in a hire purchase agreement by concealing the truth, that she was made as a guarantor in the agreement. After obtaining the signature of the complainant fraudulently, the accused purchased a car and thereafter, they defaulted payment and proceedings were initiated against the

complainant, it is contended. It is further contended that 7 cents of landed property belonging to the complainant is now attached and though a complaint was given to the police, because of the alleged influence of the accused, no action was taken.

3. Learned counsel for the petitioners/accused vehemently contended that this is only an attempt on the part of the complainant to convert a civil proceedings into a criminal proceedings with a view to pressurize the accused to pay the loan amount and get the property of the complainant released from attachment. The petitioners have not made any mis-representation to the complainant, but the complainant knowingly signed the agreement as a guarantor and not as a witness, it was submitted. The allegations to the contrary are raised only with a view to drag the petitioners to the criminal court without any basis, it was contended. It was also submitted that the allegations in the complaint will not constitute any offence under sections 406 or 420 of the Code of Criminal Procedure read with section 34 of the Indian Penal Code.

4. On hearing both sides, it appears that there is a factual dispute as to whether any mis-representation was made by the accused to the complainant or not. The question is whether the complainant signed the agreement knowing that she was a guarantor or whether she was persuaded by mis-representation to sign the agreement as a witness. Whether there was any fraudulent act or dis-honest intention to deceive the

complainant to obtain the signature in the hire purchase agreement as a witness is a question of fact which is disputed in these proceedings. It can be resolved only by taking evidence .

5. It is true, as argued by the learned counsel for the petitioners, the complaint does not clearly disclose some of the ingredients of the offence, but it is well-settled that a complaint cannot be quashed even if allegations in the complaint fall short of one or two ingredients of the offence. On going through the complaint, if the court finds that that there are sufficient grounds to proceed with the case , the High Court must be slow to interfere to quash the proceedings. In the above circumstances, I do not find any ground to interfere with and to quash the complaint.

The Criminal Miscellaneous Case is dismissed.

K. HEMA, JUDGE.

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